

No. 13077

United States
Court of Appeals
For the Ninth Circuit.

PAUL W. SAMPSELL, Trustee in Bankruptcy
of the Estate of Radiophone Corporation,
Bankrupt,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED

NOV 14 1951

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

CRAIG, WELLER & LAUGHARN,
817, 111 West 7th Street,
Los Angeles 14, Calif.

For Appellee:

ERNEST A. TOLIN,
United States Attorney;
E. H. MITCHELL, and
EDWARD R. McHALE,
Assistants U. S. Attorney;
EUGENE HARPOLE, and
JAMES D. PETTUS,
Special Attorneys,
Bureau of Internal Revenue,
600 U. S. Post Office &
Court House Bldg.,
Los Angeles 12, Calif.

In the District Court of the United States Southern
District of California, Central Division

In Bankruptcy, No. 45174-WM

In the Matter of

RADIAPHONE CORPORATION, a Corporation,
Debtor.

PETITION FOR AN ARRANGEMENT UNDER
THE PROVISIONS OF CHAPTER XI OF
THE BANKRUPTCY ACT

To the Honorable Judges of the District Court of
the United States for the Southern District of
California, Central Division:

The verified petition of Radiaphone Corporation,
a corporation, respectfully represents to the Court
as follows:

I.

That your petitioner was incorporated under and
by virtue of the laws of the State of California on
the 3rd day of July, 1946, and has had its princi-
pal place of business at 1142 Wall Street in the City
and County of Los Angeles, State of California,
for the greater portion of the six months last past
immediately preceding the filing of this petition.

II.

That your petitioner was and is now engaged in
the manufacturing business and is authorized to file
a petition under the provisions of Chapter XI of
the Bankruptcy Act as amended.

III.

That no bankruptcy proceeding has heretofore been filed by your petitioner and no involuntary petition is now pending against [2*] your petitioner.

IV.

That your petitioner is not insolvent. However, it is unable to pay its unsecured debts as they have matured and desires to procure the benefits as provisions of Chapter XI of the Bankruptcy Act.

V.

That your petitioner, on or about July 3, 1946, obtained all of its assets and effects by a consolidation and reorganization of two corporations then engaged in business, to wit: (1) Radiation Products, Inc., and (2) Pacific Fabricated Products, Inc. That the Radiation Products, Inc., had previously been engaged in business for a period of approximately ten years and the Pacific Fabricated Products, Inc., for a period of approximately one year.

That the gross assets taken over by your petitioner from the Radiation Products, Inc., amounted to \$447,076.02; with liabilities of \$187,142.02. That the said company was then engaged in the manufacturing of electronic equipment.

That the gross assets taken over from the Pacific Fabricated Products, Inc., amounted to \$198,963.00; with liabilities of \$123,657.00. That said company was then engaged in the manufacturing of wood products.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

That after the said consolidation your petitioner then continued to manufacture marine radio transmitters and receivers, together with radio telephones which were used and are used primarily from ship to shore, from ship to ship, etc., and also continued to manufacture and sell home receivers, which consisted of table model radios which were distributed primarily through the retail drug store trade, and that the aforesaid operations were conducted at the plant of the debtor located at 1142 Wall Street in Los Angeles. That in addition to the foregoing your petitioner also continued to manufacture cabinets for the said radios as aforesaid and also household furniture [3] at its plant at 1305 East Valley Boulevard in the City of El Monte, County of Los Angeles, State of California.

That during the period from July 3, 1946, to January 30, 1947, the gross business conducted by your petitioner in actual sales amounted to \$563,-507.04. That your petitioner, however, could have doubled the said business if it had obtained various critical items which went into the manufacturing of the radio transmitters and receivers. That by reason of your petitioner's inability to obtain the said critical items, although it had obtained other numerous items, it was unable to operate its business at more than 50% of capacity and consequently suffered a loss of approximately \$230,000.00.

That the inventory of your petitioner at the present time amounts to approximately \$556,183.64; which consists of raw materials of approximately \$248,000; work in progress of approximately \$65,-

000; and finished merchandise of approximately \$240,000.00.

That your petitioner owns the property where the plants of the debtor are located, as aforesaid.

VI.

Debtor's Proposed Plan of Arrangement

Article I.

That your petitioner proposes the following plan of arrangement, to wit:

That it be authorized as debtor in possession to maintain, conduct and operate its business under the supervision of this court without a receiver, and it desires to and will pay its debts to its creditors and other parties entitled to any payments, in the following manner and method, to wit:

That it will immediately undertake a vigorous campaign to market and sell its finished products, which should return approximately \$350,000.00. That it should net from the sale of said merchandise \$129,000.00, and your petitioner believes that the same can be accomplished through its regular business channels within a period from ten to fifteen months. That your petitioner also will continue its [4] operation in converting its raw material into finished and saleable merchandise. The raw material and the work in process at the present time amounts to approximately \$313,000.00.

That from its operations, or from a refinancing of your debtor's business, or from a sale of a portion of its assets, your debtor will pay all of its creditors within a period of twenty-four months.

Article II.

That your petitioner proposes to pay its creditors and other parties in interest in the following manner, to wit:

Class A: The costs and expenses of administration incurred in the proceedings herein, including the debtor's attorney's fees, court costs, etc., together with the claims of creditors entitled to priority as provided in Section 64(a), Subdivisions 2, 4 and 5 of the Bankruptcy Act, within a period of thirty days after the court makes and enters its order approving and confirming this plan of arrangement, with the provision, however, that the parties entitled to such payment as aforesaid may otherwise agree with the debtor to payments on their respective claims over a period of time.

Class B: That the claims of secured creditors will be paid in such manner and method as will be subsequently agreed to by the said secured creditors and the debtor, or in accordance with any order of this court made with respect thereto.

Class C: That the claims of unsecured creditors be divided as follows: (1) Claims of \$500.00 or under; (2) Claims in excess of \$500.00.

It appears from the books and records of the debtor herein that there are a total of 138 unsecured creditors' claims, totaling approximately \$150,000.00. That 84 of said claims appear to be in Subdivision (1) of Class C as aforesaid, totaling \$7,853.86. And it appears that 54 of said claims appear to be in Subdivision (2) of Class C as aforesaid, totaling \$142,146.14. [5]

That in order to expedite the administration, your petitioner proposes to pay the unsecured creditors in Subdivision (1) of Class C, which amount to approximately \$7,853.86, within a period of not to exceed thirty days after the order is made and entered approving and confirming the plan of arrangement herein; in which event said creditors will not be affected by the plan herein and their consent to the same will not be required.

That your debtor proposes that the claims of unsecured creditors in Subdivision (2) of Class C as aforesaid will be paid within a period of not to exceed 24 months and in quarterly installments of not less than $12\frac{1}{2}\%$; the said payments to commence within four months from the entry of the order approving and confirming the plan herein.

Article III.

That your debtor proposes that the court herein retain jurisdiction of the debtor's property and its operations after the entry of the order approving and confirming the debtor's plan only as long as it is necessary to put into effect the plan herein proposed, and in any event not longer than after the first payment is made to the claims of unsecured creditors in Class C, Subdivision (2) thereof.

Article IV.

That in the event any claim is in controversy, including and without limiting the claims of prior, secured and unsecured creditors with respect to their respective classifications or the amounts due,

the debtor under order of court may nevertheless proceed to pay other creditors and be restored to possession of its assets during the pendency of a final determination with respect to any such disputed claim, and may make such provisions to protect the rights of such creditor to payment of its claim in such manner as the court may direct.

Article V.

That your debtor proposes that it be authorized to sell any portion or all of its assets that it deems advisable to effect and consummate the plan herein proposed, and that while the [6] proceedings are pending before the above-entitled court, such sale or sales shall be made in such manner as the court herein may direct.

Article VI.

That your debtor proposes that it be permitted, subject to the approval of the court herein while the proceedings are pending before it, to obtain at any time loans of money and to give securities therefor, either in the form of debtor's certificates, mortgages, or otherwise, and that it be permitted to open escrows and to execute any and all appropriate instruments, documents and papers in connection therewith as may be required to consummate any such loan.

VII.

That it is necessary for the speedy and proper administration of the debtor's affairs and the equitable payment of creditors, that all creditors and

parties be enjoined from commencing or prosecuting any suit, foreclosure proceedings in any form or manner, or attempting to remove any property in the possession and under the control of your debtor other than by appropriate proceedings before the above-entitled court.

Wherefore, your petitioner prays that proceedings be had upon this petition in accordance with the provisions of Chapter XI of the Act of Congress relating to bankruptcy, and that all creditors and all other parties be enjoined from commencing or prosecuting any suit in any court or conducting any sale or foreclosure proceedings affecting the property of the debtor, or repossessing or attempting to take possession of any property in the possession or under the control of your petitioner, except by receiving and obtaining appropriate orders from the above-entitled court.

[Seal]

RADIAPHONE
CORPORATION,

By /s/ REHBOCK LEWIS,
President.

GEORGE T. GOGGIN, and
SHEPPARD, MULLEN,
RICHTER & BALTHIS.

By /s/ GEORGE T. GOGGIN,
Attorneys for Debtor. [7]

Certified Copy of Resolution

“Resolved, that the president or secretary of this corporation be and he is hereby authorized on behalf of this corporation to prepare or cause to be prepared a petition for a plan of arrangement under the provisions of Chapter XI of the Bankruptcy Act and to file, or cause the same to be filed, in the District Court of the United States for the Southern District of California, Central Division;

“Resolved, Further, that this corporation employ George T. Goggin and Sheppard, Mullen, Ritcher & Balthis, attorneys at law of Los Angeles, California, licensed to practice in all of the courts of the State of California, as well as the District Court of the United States in and for the Southern District of California, for the purpose of performing any and all of the legal services necessary in connection with the filing of the petition as aforesaid and conducting all subsequent proceedings on behalf of this corporation in connection therewith.”

The undersigned, Rehbock Lewis, hereby certifies that he is the President of the Radiophone Corporation, a corporation, and that the foregoing is a true and correct copy of the resolutions of the Board of Directors adopted at a meeting duly and regularly called on the 1st day of August, 1947.

Dated this 4th day of August, 1947.

/s/ REHBOCK LEWIS,
President.

[Radiophone Corp. Seal] [8]

State of California,
County of Los Angeles—ss.

Rehbock Lewis, being by me first duly sworn, deposes and says: that he is the President of the Debtor in the above-entitled action; that he has read the foregoing Petition for an Arrangement under the provisions of Chapter XI of the Bankruptcy Act and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ REHBOCK LEWIS.

Subscribed and sworn to before me this 4th day of August, 1947.

[Seal] /s/ ESTHER ANDERSON,
Notary Public in and for the County of Los
Angeles, State of California.

[Endorsed]: Filed August 5, 1947; U.S.D.C. [26]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND
ORDER OF REFERENCE UNDER SEC-
TION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on Aug. 5, 1947, before the said Court the petition of Radiaphone Corporation, a corporation, that he desires to obtain

relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hubert F. Laugharn, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Radiophone Corporation, a corporation, shall attend before said referee on August 12, 1947, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable C. E. Beaumont, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on August 5, 1947.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk.

[Endorsed]: Filed August 5, 1947; U.S.D.C. [27]

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY

The said Radiophone Corporation, Debtor, having filed a Petition herein under Chapter XI of the Bankruptcy Act, and said debtor corporation having failed to present a plan of arrangement that was fair or feasible, and the unsecured creditors having requested that an Order of Adjudication be entered herein, and no one objecting thereto, it is

Ajudged that the Radiophone Corporation is a bankrupt under the Act of Congress relating to bankruptcy.

Dated at Los Angeles, California, this 8 day of November, 1947.

/s/ HUBERT F. LAUGHARN,
Referee in Bankruptcy.

[Endorsed]: Filed Nov. 8, 1947; Referee.

[Endorsed]: Filed Nov. 14, 1947; U.S.D.C. [28]

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S BOND

Know All Men by These Presents:

That we, Paul W. Sampsell, of Los Angeles, California, as Principal and the Saint Paul-Mercury Indemnity Company of Saint Paul, a corporation duly incorporated under the laws of the State of

Delaware, and authorized to act as surety under the Act of Congress approved August 13, 1894, whose principal office is located in Saint Paul, State of Minnesota, as Surety, are held and firmly bound unto the United States of America in the sum of Fifty Thousand & no/100 Dollars (\$50,000.00) in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Signed and Sealed this 5th day of November A.D. 1947.

The Condition of This Obligation Is Such, That whereas the above-named Paul W. Sampsell was, on the 5th day of November, A.D. 1947, appointed Trustee in the case pending in bankruptcy in the said Court, wherein Radiophone Corporation is the Bankrupt, and he, the said Paul W. Sampsell has accepted said trust with all the duties and obligations pertaining thereto.

Now, Therefore, if the said Paul W. Sampsell, Trustee as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of the said Bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation

to be void; otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of:

[Seal] /s/ HUBERT F. LAUGHARN.

[Seal] /s/ PAUL W. SAMPSELL.

[Seal] SAINT PAUL-MERCURY
INDEMNITY COMPANY OF
SAINT PAUL,

By /s/ LUCILE A. TURNER,
Its Attorney-in-fact.

/s/ FRANK C. WELLER,
Attorneys.

Approved this 7th day of November, A.D. 1947.

HUBERT F. LAUGHARN,
Referee in Bankruptcy. [29]

Acknowledgement of Attorney-in-fact

State of California,
County of Los Angeles—ss.

On this 5th day of November, 1947, before me, a Notary Public, within and for the said County and State, personally appeared Lucile A. Turner, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of and for the Saint Paul-Mercury Indemnity Company, Saint Paul, Minnesota, a corporation created, organized and existing under and by virtue of the laws of the State of Delaware, and acknowl-

edged to me that he subscribed the name of the Saint Paul-Mercury Indemnity Company thereto as Surety, and his own name as Attorney-in-Fact.

[Seal] /s/ GEO. C. KETTNER, JR.,
Notary Public.

My Commission expires.....

[Endorsed]: Filed Nov. 7, 1947; Referee.

[Endorsed]: Filed Nov. 25, 1947; U.S.D.C.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable William C. Mathes, Judge of the
United States District Court, Southern District
of California, Central Division:

I, David B. Head, Referee in Bankruptcy, to
whom the above-entitled matter is now referred,
certify as follows:

On March 10, 1950, I entered a routine order
disallowing the claim herein of the Collector of
Internal Revenue in the amount of \$15,196.35.
Under the provisions of that order, the creditor was
given 5 days within which to move for reconsider-
ation, which he did. The proceedings resulted in the
findings and order here complained of by the trustee.
There is no factual dispute.

The question is whether the three months limita-
tion of sec. 355 of Chapter XI of the Bankruptcy
Act or the six months provision of sec. 57 n of the

same Act applies to claims of the United States of America.

To my knowledge there are three District Court cases on the subject: *In re Dorb Chemist Pharmacies*, 29 F. Supp. 832 [30] (Southern District of New York), *In re Irwin Service Corp.*, 33 F. Supp. 653 (Western District of New York), and *In re Matisoff* 36 F. Supp. 896 (Northern District of Georgia). In all three of these cases, referees had held that sec. 355 applied and in all three cases they were reversed. I had some doubts about the correctness of these decisions until the case of *In re Marine Stevedoring Corp.*, 169 F. 2d 554, was decided. In that case the Circuit Court of Appeals for the Third Circuit reversed both the referee and the District Court, holding that sec. 57 n and not sec. 355 applied to claims of the United States of America. That case has settled my doubts. I have followed the rule of the reported cases in my conclusions in this case.

I further certify the following documents:

1. Claim of the Collector of Internal Revenue.
2. Order of March 10, 1950.
3. Motion for Reconsideration.
4. Findings, Conclusions and Order of May 10, 1950.
5. Petition for Review.

Dated May 24, 1950.

Respectfully submitted,

/s/ DAVID B. HEAD,

Referee in Bankruptcy. [31]

[Title of District Court and Cause.]

CLAIM OF UNITED STATES FOR TAXES

State of California.

County of Los Angeles—ss.

Harry C. Westover, Collector of Internal Revenue for the Sixth Collection District of California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says: (1) That the above-named is justly and truly indebted to the United States in the sum of \$13,575.18, with Interest and/or Penalties thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax	Period	Tax	Assessed Liability Penalty	Interest	Accrued Interest to 3-15-48	5% Penalty
Add'l Federal Unemployment	1947	18.58		.03	.10	
Pacific Faricated Products, Inc. Deficiency Inc.	1945	2,004.12			240.49	
Deficiency Excess Profits	1945	11,456.55			1,374.79	
Deficiency Inc.	1/1 to 7/3/46	95.93			5.76	
		<u>13,575.18</u>		<u>.03</u>	<u>1,621.14</u>	
Total: 15,196.35						

Further interest will accrue on the above taxes, viz., \$13,575.18, at the rate of 6% per annum, or 2.23 per day, from March 15, 1948, until paid.

The basis of the above deficiencies in income and excess profits is set out in Form 7900 letter addressed to the debtor in care of Paul W. Sampsell, Trustee, under date of February 24, 1948.

(3) That no part of said debt has been paid, but that the same is now due and payable at the office of the Collector of Internal Revenue at Los Angeles, California;

(4) That there are no set-offs or counterclaims to said debt; (5) That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens; (6) That the said indebtedness is now due and payable; That no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon; (7) That said debt has priority, and must be paid in advance of distributions to creditors, as and to the extent provided in Section 64a(4) and/or Section 659 of the Bankruptcy Act, and/or Sections 3466 of the Revised Statutes, or other applicable provisions of law.

Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or other person who fails to pay the claims of the United States in accordance with their priority.

Dated this 27th day of February, 1948.

/s/ HARRY C. WESTOVER,
Collector of Internal Revenue for the Sixth District
of California.

Subscribed and sworn to before me this 27th day of February, 1948.

[Seal] /s/ HARRIETT HAYES.

My commission expires 11/11/51.

[Endorsed]: Filed March 1, 1948; Referee. [32]

[Title of District Court and Cause.]

ORDER DISALLOWING CLAIM FILED
AFTER EXPIRATION OF STATUTORY
PERIOD

Paul W. Sampsell, the trustee herein, having called to the attention of the Court the fact that the following claim, to wit:

Name: Collector of Internal Revenue

Address: Legal Section

Federal Building

Los Angeles 14, California

\$15,196.35

was filed herein on March 1, 1948, after the expiration of the statutory period of time for filing claims herein and that no claim was filed within the said period by the within creditor, now, therefore, upon motion of the said trustee, the Referee makes the following order:

It Is Ordered that the said claim be and the same hereby is disallowed. The said claim, however, is entitled to allowance under the provisions of Section 57n of the Bankruptcy Act against any

surplus remaining which may remain in the said case, if any, after the payment of claims which have been filed and allowed within the statutory period.

It Is Further Ordered that the said trustee serve by United States mail, postage prepaid, a copy of the within order upon the said creditor or upon the holder of any power of attorney in connection therewith and the said creditor may have a period of five days thereafter within which to move for reconsideration of the said order.

Dated March 10, 1950.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed March 10, 1950; Referee. [33]

[Title of District Court and Cause.]

NOTICE OF MOTION

To: Paul W. Sampsell and to Craig, Weller & Laugharn, his counsel:

You, and Each of You, Will Please Take Notice that the United States of America will move the Referee to reconsider his Order of March 10, 1950, disallowing the claim filed by the Collector of Internal Revenue in the above-entitled proceeding on March 1, 1948, at his court room in the United States Post Office and Court House Building at Temple and Spring Streets in the City of Los Angeles, State of California, at 10:00 a.m. on the

30th day of March, 1950, or as soon thereafter as counsel can be heard.

Dated This 14th day of March, 1950.

ERNEST A. TOLIN,
United States Attorney;

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys;

EUGENE HARPOLE, and
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue;

By /s/ JAMES D. PETTUS,
Attorneys for United States
of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 14, 1950; Referee. [34]

[Title of District Court and Cause.]

MOTION FOR RECONSIDERATION OF
ORDER DISALLOWING CLAIM

Comes Now the United States of America and moves the Court to reconsider the order of the 10th day of March, 1950, disallowing the claim of the Collector of Internal Revenue for the Sixth Collection District of California filed in the above-entitled proceeding on March 1, 1948, in the sum of \$15,196.35, for the following reason:

1. The United States is not bound by the three-month limitation on filing of claims provided for by Section 355 of the Bankruptcy Act, as amended, inasmuch as it is not mentioned specifically in that section.

In re Dorb Chemist Pharmacies,
29 Fed. Supp. 832.

In re Ervin Service Corporation,
33 Fed. Supp. 653.

In re Matisoff,
36 Fed. Supp. 896.

In re Marine Stevedoring Corp.,
169 F(2d) 854.

ERNEST A. TOLIN,
United States Attorney;

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys;

EUGENE HARPOLE, and
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue;

By /s/ JAMES D. PETTUS,
Attorneys for United States
of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 14, 1950; Referee. [35]

The United States District Court Southern District
of California Central Division

No. 45,174-WM

In the Matter of
RADIAPHONE CORPORATION,
Bankrupt.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER THEREON

The motion of the United States of America for Reconsideration of the Order of the Referee disallowing the claim, came on regularly for hearing before the Honorable David B. Head, Referee in Bankruptcy, on April 26, 1950, at the hour of 2 o'clock p.m. The United States of America was represented by and through its counsel Ernest A. Tolin, United States Attorney for the Southern District of California, E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District, and Eugene Harpole and Frank W. Mahoney, Special Attorneys, Bureau of Internal Revenue, and the trustee, Paul W. Sampsell, was represented by his counsel Craig, Weller and Laugharn, by A. J. Bumb.

The Referee, after hearing the facts and argument presented, finds that:

I.

Radiaphone Corporation filed a petition under section 322 of the Bankruptcy Act on August 5, 1947.

II.

An order adjudicating Radiophone Corporation a bankrupt was [37] entered November 88, 1947. The first date set for the first meeting of creditors after the adjudication was November 26, 1947.

III.

The claim of the Collector of Internal Revenue herein was filed on the 1st day of March, 1948, for the sum of \$15,196.35, which date of filing was more than three months after the first date set for the First Meeting of Creditors after the Adjudication, but less than six months after the first date set for the First Meeting of Creditors.

CONCLUSIONS OF LAW

I.

The provisions of section 355 of the Bankruptcy Act providing for a three month limitation on filing of claims does not apply to the United States of America.

II.

The claim of the Collector of Internal Revenue was filed within the six month period provided by section 57(n) of the Bankruptcy Act.

ORDER

It is hereby ordered that the said Order disallowing the claim of the Collector of Internal Revenue

for \$15,196.35 entered March 10, 1950, be, and the same is, hereby set aside.

Dated this 15th day of May, 1950.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

Approved as to form:

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,
Attorneys for Trustee.

[Endorsed]: Filed May 10, 1950; Referee. [38]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER BY COURT

To the Honorable David B. Head, Referee in
Bankruptcy:

The verified petition of Paul W. Sampsell, respectfully shows:

I.

That he is the duly elected, qualified and acting Trustee in the above-entitled bankruptcy proceedings.

II.

That on the 10th day of March, 1950, an order was signed by the Referee disallowing claim filed by the Collector of Internal Revenue after the

period prescribed in Section 355 of the Act of Congress relating to bankruptcy.

III.

That a motion was made by the United States of America for reconsideration of the order of the Referee disallowing the said claim, and the hearing coming on before the Honorable David B. Head, Referee in bankruptcy, on the 26th day of April, 1950, at the hour of 2:00 p.m., and your petitioner appearing through his counsel, Craig, Weller & Laugharn, by A. J. Bumb, and participating [39] in said hearing, and thereupon an order was entered on the 10th day of May, 1950, granting the prayer of the said motion as follows:

“The United States District Court Southern District
of California Central Division

“No. 45,174-WM

“In the Matter of

“RADIAPHONE CORPORATION,

“Bankrupt.

“FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER THEREON

“The motion of the United States of America for Reconsideration of the Order of the Referee disallowing the claim, came on regularly for hearing before the Honorable David B. Head, Referee in Bankruptcy, on April 26, 1950, at the hour of 2 o'clock p.m. The United States of America was represented by and through its counsel Ernest A.

Tolin, United States Attorney for the Southern District of California, E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District, and Eugene Harpole and Frank W. Mahoney, Special Attorneys, Bureau of Internal Revenue, and the trustee, Paul W. Sampsell, was represented by his counsel Craig, Weller and Laugharn, by A. J. Bumb.

“The Referee, after hearing the facts and argument presented, finds that:

“I.

“Radiaphone Corporation filed a petition under section 322 of the Bankruptcy Act on August 5, 1947.

“II.

“An order adjudicating Radiaphone Corporation a bankrupt was entered November 8, 1947. The first date set for the first meeting of creditors after the adjudication was November 26, 1947. [40]

“III.

“The claim of the Collector of Internal Revenue herein was filed on the 1st day of March, 1948, for the sum of \$15,196.35, which date of filing was more than three months after the first date set for the First Meeting of Creditors after the Adjudication, but less than six months after the first date set for the First Meeting of Creditors.

“CONCLUSIONS OF LAW

“I.

“The provisions of section 355 of the Bankruptcy Act providing for a three month limitation on filing of claims does not apply to the United States of America.

“II.

“The claim of the Collector of Internal Revenue was filed within the six month period provided by section 57(a) of the Bankruptcy Act.

“ORDER

“It is hereby ordered that the said Order disallowing the claim of the Collector of Internal Revenue for \$15,196.35 entered March 10, 1950, be, and the same is, hereby set aside.

“Dated This 10th day of May, 1950.

“DAVID B. HEAD,

“Referee in Bankruptcy.

“Approved as to form:

“CRAIG, WELLER &
LAUGHARN,

“By A. J. BUMB,

“Attorneys for Trustee.”

IV.

That the said Order is erroneous for the following reasons: [41]

(a) That the decision herein is contrary to the

principles of law set forth in the Act of Congress relating to Bankruptcy.

(b) That the Collector of Internal Revenue is a creditor of the within bankrupt, and as such is bound by Section 355 of Chapter XI and Section 57-n of the aforementioned Act.

(c) That the claim of the Collector of Internal Revenue must be filed within the same period of time as those claims of other creditors; that the original petition under Chapter XI was filed on the 5th day of August, 1947; that the Order of Adjudication was entered on the 8th day of November, 1947; that the first date set for the First Meeting of Creditors was the 26th day of November, 1947; that the final date for filing of claims was the 26th day of February, 1948; that the claim of the Collector of Internal Revenue was filed on the 1st day of March, 1948.

(d) That there is no provision in the Act of Congress relating to Bankruptcy granting to the Collector of Internal Revenue any right, privilege, or power greater than those possessed by the other creditors, except as in the *provisio* of Section 57-n of the aforesaid act, which states:

“That the Court may upon application, before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any state or sub-division thereof”;

that no such application was made herein by the Collector of Internal Revenue.

(e) That the Collector of Internal Revenue is bound by the provisions of Section 355 of the aforementioned act, as the United States government is expressly mentioned in Section 57-n of the said Act which states that any and all claims in any proceedings under this act must be filed as prescribed in the said Section 57-n, or as prescribed in any amendment to the said Section 57-n. As Section 355 is merely an amendment of Section 57-n, the specific [42] enumeration of the United States in Section 57-n is automatically read into Section 355.

(f) That the decision of the Court is contrary to Congressional intent in the matter.

Wherefore, your petitioner prays for a review of the said Order by the above-entitled Court, and that said Order be vacated and set aside.

/s/ PAUL W. SAMPSELL,
Trustee in Bankruptcy.

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,
Attorneys for Trustee. [43]

United States of America,
Southern District of California—ss.

Paul W. Sampsell, being by me first duly sworn, deposes and says: that he is petitioner in the above-entitled action; that he has read the foregoing Petition for Review of Referee's Order by Court and knows the contents thereof: and that the same

is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

/s/ PAUL W. SAMPSELL.

Subscribed and Sworn to before me this 18th day of May, 1950.

[Seal] /s/ BESS A. ALDRICH,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed May 23, 1950; Referee.

[Referee's Certificate on Review, Endorsed]:
Filed May 24, 1950; U.S.D.C. [44]

United States District Court for the Southern
District of California Central Division

In Bankruptcy No. 45,174-WM

In the Matter of
RADIAPHONE CORPORATION,

Bankrupt.

ORDER ON REVIEW OF REFEREE'S
ORDER FILED MAY 10, 1950

Upon the petition for review filed May 23, 1950, by the trustee; upon the certificate of Referee David B. Head filed May 24, 1950; upon the proceedings before the referee as appear from his certificates; and it appearing to the court that §355 of the Bank-

ruptcy Act [11 U.S.C. §755] providing for the filing of claims “within three months after the first date set for the first meeting of creditors . . . “does not govern claims filed by the United States [New York v. Irving Trust Co., 288 U.S. 329, 331 (1933); 8 Collier, Bankruptcy 1016 (14th ed. 1941)];

It Is Now Ordered that the referee's order filed May 10, 1950, setting aside the “Order disallowing the claim of the Collector” be and is hereby confirmed.

It Is Further Ordered that the Clerk this day serve copies of this order on Referee David B. Head; attorneys for the trustee; and attorneys for the Collector [45] of Internal Revenue.

June 19, 1951.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed June 19, 1951; U.S.D.C. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Ernest A. Tolin, United States Attorney; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys; Eugene Harpole and Frank W. Mahoney, Special Attorneys, Bureau of Internal Revenue, and Robert A. Riddell, the Collector of Internal Revenue of the United States:

Notice Is Hereby Given that the undersigned, Paul W. Sampsell, as Trustee in Bankruptcy for the estate of Radiophone Corporation, Bankrupt, through his attorneys, Messrs. Craig, Weller & Laugharn, A. J. Bumb of counsel, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from that certain order made and entered dated June 19, 1951, by Honorable William C. Mathes, United States District Judge, affirming a certain order of Referee in Bankruptcy David B. Head, dated May 10, 1950, setting aside an Order Disallowing Claim of Collector of Internal Revenue, and from each and every part thereof, and will ask said Court of Appeals for the Ninth Circuit to reverse the order of the District Court complained of herein.

Dated at Los Angeles, in the Southern District of California, this 17th day of July, 1951.

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,
Attorneys for Trustee.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 17, 1951; U.S.D.C. [47]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The trustee in the above-captioned matter, also the appellant herein, sets forth the following points on which he intends to rely on appeal:

Point I.

That the District Judge erred in affirming the order of Referee David B. Head, allowing the claim of the Collector of Internal Revenue as a valid, timely filed claim in the within bankrupt estate.

Point II.

That the District Judge erred in refusing to reverse the order of the Referee and in refusing to disallow the claim of the Collector of Internal Revenue as a claim in the within bankrupt estate, as the said claim was not filed within the statutory period provided therefor.

Point III.

That the District Judge erred in concluding that the 1938 Amendment of Section 57(n) of the Bankruptcy Act does not prohibit the allowing of the claim of the said Collector of Internal Revenue.

Point IV.

That the District Judge erred in not concluding that Section 355 of the Bankruptcy Act was an Amendment of, or Supplement to Section 57(n) of the Bankruptcy Act. [48]

Point V.

That the District Judge erred in not utilizing the approved rules of statutory interpretation in construing Section 57(n) and Section 355 of the Bankruptcy Act.

Point VI.

That the District Judge erred in concluding that the present problem was controlled by *New York v. Irving Trust Co.*, 288 U.S. 329 (1933), which case was decided prior to the 1938 Amendment of the Bankruptcy Act.

Point VII.

That the District Judge erred in failing to conclude that the Collector of Internal Revenue of the United States of America is specifically designated as being subject to the provisions of Section 355 of the Bankruptcy Act.

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,
Attorneys for Trustee and
Appellant.

[Endorsed]: Filed July 17, 1951; U.S.D.C. [49]

[Title of District Court and Cause.]

DESIGNATION OF PARTS OF RECORD
ON APPEAL

To Edmund L. Smith, Clerk of the Above-Named
Court:

You are hereby requested to prepare, certify, and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the notice of appeal heretofore filed by the trustee in the above-entitled matter, transcript of record in the above-entitled matter, prepared and transmitted as required by law and by rules of said court, and to include in said transcript of record the following documents, or certified copies thereof, to wit:

1. Petition for an Arrangement under the provisions of Chapter XI of the Bankruptcy Act of Radiophone Corporation, debtor, in Case No. 45,174-WM.

2. Approval of debtor's petition and order of reference under Section 322 of the Bankruptcy Act.

3. Order of Adjudication of bankrupt.

4. Order Approving Trustee's Bond.

5. Order fixing date for the First Meeting of Creditors.

6. Affidavit of Mailing Notice of First Meeting of Creditors.

7. Claim of the Collector of Internal Revenue filed on [50] March 1, 1948, for the sum of \$15,196.35.

8. Order of March 10, 1950, disallowing claim filed after expiration of Statutory Period.

9. Motion for reconsideration of order disallowing claim.

10. Notice of Motion.

11. Findings of Fact, Conclusions of Law and Order thereon of May 10, 1950.

12. Petition for Review of Referee's Order filed May 23, 1950.

13. Referee's Certificate on Review dated May 24, 1950.

14. Order of Review of Referee's Order filed May 10, 1950, affirming Referee's Order, District Judge William C. Mathes.

15. Notice of Appeal.

16. Points upon which appellant intends to rely on appeal.

17. Designation of Parts of Record on Appeal.

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,

Attorneys for Trustee and
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 17, 1951; U.S.D.C. [51]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 52, inclusive, contain the original Petition for an Arrangement Under Chapter XI of the Bankruptcy Act and Schedules; Approval of Debtor's Petition and Order of Reference; Adjudication of Bankruptcy; Bond of Trustee and Order of Approval; Referee's Certificate on Review; Claim of United States for Taxes; Order Disallowing Claim Filed After Expiration of Statutory Period; Notice of Motion and Motion for Reconsideration of Order Disallowing Claim; Findings of Fact, Conclusions of Law and Order Thereon; Petition for Review; Order on Review of Referee's Order Filed May 10, 1950; Notice of Appeal; Statement of Points on Appeal and Designation of Record on Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24th day of August, A.D. 1951.

[Seal] /s/ EDMUND L. SMITH,
Clerk.

[Endorsed]: No. 13077. United States Court of Appeals for the Ninth Circuit. Paul W. Sampsell, Trustee in Bankruptcy of the Estate of Radiophone Corporation, Bankrupt, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed August 27, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13077

In the Matter of:
RADIAPHONE CORPORATION,
Bankrupt.

POINTS ON WHICH APPELLANT INTENDS
TO RELY AND DESIGNATION OF PARTS
OF THE RECORD TO BE PRINTED

To Paul P. O'Brien, Clerk of the Above-Named
Court:

Points on Which Appellant Intends to Rely

The undersigned attorneys for the Trustee and Appellant herein do hereby designate the following as the points on which the Trustee and Appellant intend to rely on appeal:

Point I.

That the District Judge erred in affirming the order of Referee David B. Head, allowing the claim of the Collector of Internal Revenue as a valid, timely filed claim in the within bankrupt estate.

Point II.

That the District Judge erred in refusing to reverse the order of the Referee and in refusing to disallow the claim of the Collector of Internal Revenue as a claim in the within bankrupt estate, as the said claim was not filed within the statutory period provided therefor.

Point III.

That the District Judge erred in concluding that the 1938 Amendment of Section 57(n) of the Bankruptcy Act does not prohibit the allowing of the claim of said Collector of Internal Revenue.

Point IV.

That the District Judge erred in not concluding that Section 355 of the Bankruptcy Act was an Amendment of, or Supplement to, Section 57(n) of the Bankruptcy Act.

Point V.

That the District Judge erred in not utilizing the approved rules of statutory interpretation in construing Section 57(n) and Section 355 of the Bankruptcy Act.

Point VI.

That the District Judge erred in concluding that the present problem was controlled by *New York v. Irving Trust Co.*, 288 U.S. 329 (1933), which case was decided prior to the 1938 Amendment of the Bankruptcy Act.

Point VII.

That the District Judge erred in failing to conclude that the Collector of Internal Revenue of the United States of America is specifically designated as being subject to the provisions of Section 355 of the Bankruptcy Act.

Designation of Parts of the Record
to Be Printed

The undersigned attorneys for the Trustee and Appellant herein do hereby designate the parts of the record certified up by the Clerk of the District Court of the United States for the Southern District of California as being the parts of the record to be printed on appeal in this Court:

District Court
Clerk's Record

1. Petition for an Arrangement under the provisions of Chapter XI of the Bankruptcy Act of Radiophone Corporation, debtor, in Case No. 45,174-WM.....P. 2

Please print caption in the Petition for an Arrangement, but in all subsequent proceedings in the bankruptcy proceeding of Radiophone Corporation omit the formal caption, merely designating it by number and "title of Court and Cause."

2. Approval of Debtor Petition and Reference under Section 322 of the Bankruptcy ActP. 27
3. Order of Adjudication of bankrupt.....P. 28
4. Order approving Trustee's bondP. 29
5. Claim of the Collector of Internal Revenue filed on March 1, 1948, for the sum of \$15,196.35P. 32
6. Order of March 10, 1950, disallowing claim filed after expiration of Statutory PeriodP. 33

District Court
Clerk's Record

7. Motion for reconsideration of order dis-
allowing claimP. 35
8. Notice of MotionP. 34
9. Findings of Fact, Conclusions of Law and
Order thereon of May 10, 1950.....P. 37
10. Petition for Review of Referee's Order
filed May 23, 1950.....P. 39
11. Referee's Certificate on Review dated
May 24, 1950P. 30
12. Order of Review of Referee's Order filed
May 10, 1950, affirming Referee's Order,
District Judge William C. Mathes.....P. 45
13. Notice of AppealP. 47
14. Points on which Appellant intends to rely
on appealP. 48
15. Designation of Parts of Record on Ap-
pealP. 50

Dated August 21st, 1951.

CRAIG, WELLER &
LAUGHARN,

By /s/ A. J. BUMB,
Attorneys for Trustee and
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sept. 27, 1951; U.S.C.A.

